

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re D.F., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

K.F.,

Defendant and Appellant.

E059635

(Super.Ct.No. SWJ1200427)

OPINION

APPEAL from the Superior Court of Riverside County. John M. Monterosso,
Judge. Affirmed with directions.

Michelle Jarvis, under appointment by the Court of Appeal, for Defendant and
Appellant.

Pamela J. Walls, County Counsel, and Julie Koons Jarvi, Deputy County Counsel,
for Plaintiff and Respondent.

I. INTRODUCTION

K.F. (mother) appeals from a visitation order with respect to her daughter, D.F. (born in 2000), entered at a hearing held August 23, 2013. Mother contends the juvenile court improperly delegated authority to determine visitation to D.F. and her therapist. We affirm as modified pursuant to the parties' stipulation.

II. FACTS AND PROCEDURAL BACKGROUND¹

In June 2012, the Riverside County Department of Public Social Services (Department) filed a petition under Welfare and Institutions Code² section 300, subdivisions (b) failure to protect and (c) serious emotional damage.

At the detention hearing on June 7, 2012, the juvenile court found a prima facie showing had been made. The court ordered that visitation with mother would be detrimental to D.F., and it ordered no visitation. The court ordered reunification services for mother. At the continued detention hearing, the court again found a prima facie showing and ordered supervised visitation once weekly in a therapeutic setting.

The social worker reported that no visitations had taken place because D.F. did not want to visit mother. The social worker recommended that both mother and D.F. receive psychological evaluations and participate in counseling and conjoint counseling and that

¹ The facts and most of the procedural history are taken from this court's opinion in case No. E058472.

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

any visitation take place in a therapeutic setting. At a hearing on July 2, 2012, in addressing visitation, the court stated: “I’m not trying to prejudge anything until I hear all the evidence. Obviously, [D.F.’s] reaction at the mention of mom’s name is a violent physical reaction, wasn’t simply, ‘I don’t feel like seeing mom.’ It was extremely detrimental to her emotional state. Whether visitation takes place or not is something that needs to be done delicately with professionals assessing the situation. I agree, if a therapist feels it’s appropriate, the child can emotionally handle a visit with mom, by all means, I’m supportive of that.”

The Department filed an addendum report on July 27, 2012. D.F. had been in the hospital from July 11 until July 13 because she refused to eat. She told the social worker she would be willing to visit with mother “only if someone was right there with her,” although she also said she missed mother and wanted to go home if she saw proof that mother had changed. She also said she probably would have a nervous breakdown if she visited mother.

The Department filed a report of mother’s psychological evaluation. The psychologist determined that mother had a personality disorder leading to an “emotionally charged situation between herself and minor . . . such that minor shows symptoms of a conversion disorder and when mother is not present, those symptoms dissipate.” The psychologist concluded, “I would be cautious in this reunification process which is going to require extensive therapy with minor and with client. I would not force the issue of contact between them until such time as each therapist agrees that it

would be appropriate and then it should first be done in a therapeutic session with each therapist present and involved.”

At the jurisdictional hearing, the juvenile court found true allegations under section 300, subdivision (b). The court ordered reunification services for mother and ordered that “[p]rior visitation orders remain in full force and effect.”

On October 24, 2012, mother’s counsel filed an ex parte application for therapeutic visitation between mother and D.F. In response, the Department recommended that all visits between mother and D.F. be suspended “as they are detrimental [to] the emotional well-being of [D.F.]” D.F.’s therapist provided a letter stating that she did not feel D.F. would benefit from family therapy with mother.

On November 14, 2012, the juvenile court held a hearing on the application. Mother’s counsel informed the court that D.F. did not want to have visits with mother, either in person or by telephone. Counsel continued, “Essentially, for the most part, I’m withdrawing my request, since at this point, I don’t expect it to happen based on everyone’s comments on the issue. I would essentially withdraw the request for visitation, immediate visitation, therapeutic visitation with the minor, but I’m still going to request authorization for therapy and visits when appropriate.”

Counsel for the Department noted the current visitation order called for once-weekly visits and requested the court to modify that order. The court responded, “I don’t want to be in a position where we take that off the table, so [D.F.] is not at least considering that option. None of us will be able to sit in on the therapy sessions with her

to make sure the therapist is dealing with that issue. I think it needs to be dealt with. I think it's critical. But if you harp on her, ask her every week, it may well cause her to dig in and turn off. I'm sort of the mind to simply modify the order that they can suspend visitation until recommended by the therapist. Makes all the sense in the world. Once there is a breakthrough, the Department can start making arrangements." Mother's counsel asked if the court was "continuing to authorize therapeutic visits[.]" The court responded, "Yes. Basically conjoint therapy, not necessarily therapeutic visits, but conjoint therapy." Mother's counsel submitted "on [his] previous comments." The court ordered: "As to visitation, I'll simply find that visitation at this point in time between [D.F.] and her mom will be suspended until recommended by the therapist. I'll continue to authorize conjoint therapy between the mother and child upon the therapist's recommendation for that to occur." The court's minute order "authorize[d] conjoint therapy between the mother and the minor when deemed appropriate," and stated, "[V]isitation is suspended until recommended by the therapist that visits resume."

The Department filed a six-month status review report in January 2013. D.F. was continuing to attend counseling sessions. Her therapist recommended that no contact take place between D.F. and mother because D.F. "continue[d] to report past abusive incidents committed on her by the mother and the mother's boyfriends." D.F.'s caretaker reported that D.F. did not have an eating disorder and she maintained a healthy appetite, although she sometimes did not eat when she was upset. D.F. expressed animosity toward mother and became anxious when visitation or phone calls with mother were

mentioned. The Department filed a report of D.F.'s psychological evaluation which stated, "[D.F.] is experiencing a heightened degree of depression, anxiety and posttraumatic patterns which are consistent with her descriptions of the severe physical and sexual trauma when with her mother. . . . It is quite evident she will be traumatized even by having any contact with her mother." There were no indications of psychosis, and D.F. felt safe and secure in her current placement.

At the review hearing in January 2013, mother's counsel requested that mother's therapist and D.F.'s therapist communicate in an attempt "to make some steps forward in this matter."

The court stated: "[Mother's counsel] raises the point that I've been thinking about as well. Because we're in this phase now, that if visits never take place, then the result is preordained, that is, mom and child will never be reunified. This Court always gives great deference to the professional opinion of therapists, in particular therapists who will recommend that a child who is suffering like [D.F.] has suffered to defer to that child's wishes regarding visitation with that parent. But I'm not satisfied from the information I have as to weighing out the downside of forcing the issue, if you will, therapeutic visit to see how the child reacts versus what I believe is a preordained result, which is failure to reunify if there aren't some visits if there isn't an attempt. Waiting for the child to be ready, we may wait forever. I don't know. I don't know the answer to that. [¶] I think the first thing [mother's counsel] suggested, I thought was a very valid suggestion, which is to get both therapists together to at least discuss a plan, and I don't

intend to order a visit or a therapeutic visit, but I do want to monitor this. Otherwise, we're likely to come back in six months with no new information." The court stated: "I also intend to keep the current visitation order in place, but order that the Department facilitate communication between the two therapists, mom's therapist and child's therapist for the purpose of developing a plan to lead to conjoint therapy within the foreseeable future, which by our definition would be in the next six months." The court set the matter for a special review hearing to take place in two months "so we can see how things are going and I can get more direct information from the therapist on this subject."

The Department filed an interim review report in March 2013. The social worker stated that D.F. had "'googled her name'" on a school computer, and she found a "'Child Alert'" that contained personal information about the current case. It named the agency of D.F.'s current caretakers, the counseling agency, and the names of D.F.'s therapist and attorney. D.F. became hysterical on seeing the report, and she was terrified that mother had so much information and "would come and 'get her.'" The information had apparently come from the Department's previous report that had been provided to mother.

In March 2013, D.F. provided the Department a letter, addressed to the "Judge," in which she stated her reasons for not wanting to have any contact with mother. Those reasons included that mother had beaten her, called her names, forced her to have sex

with men, and threatened to “hang [her] body on a telephone pole and burn it or tie [her] hair to the fan of the car engine” if she told anyone.

The Department filed an addendum report in March 2013. The social worker reported that arrangements were underway to increase D.F.’s therapy sessions to once weekly. The Department had received a telephone message from an FBI agent who reported that mother was trying to file a missing person report on D.F. The Department informed the agent that D.F. was a dependent child of the court. The social worker also reported that mother’s therapist and D.F.’s therapist had not yet spoken. D.F.’s therapist provided a letter stating that D.F. did not want her to communicate with mother’s therapist.

At the special hearing in April 2013, the court questioned D.F. in chambers about her willingness to visit with mother, among other things. Following the hearing, the court left the visits as “status quo” and authorized D.F.’s and mother’s therapists to communicate in the event D.F. “decide[d] to allow that waiver [of confidentiality] to take place as well as an authorization for visits if [D.F.] makes progress in her therapy to where she’s open to having contact visits with mom or extended maternal family.” The court’s minute order stated, “Prior visitation orders remain in full force and effect,” and “Court authorizes minor to have visitation with mother only if the minor is open to it.”

Mother appealed from the April 2013 visitation order in case No. E058472. In an opinion filed January 22, 2014, this court affirmed but directed the juvenile court to give

guidance on the conditions under which visitation may commence and any limitations or required circumstances for visitation.

At the special interim hearing held August 23, 2013, the court stated, “My order is that I am authorizing visitation in a therapeutic setting; however, the child will not be forced to participate against her will.” The court also stated, “[T]he prior order is given full force and effect.” Essentially, the juvenile court continued the visitation order which was addressed on appeal in case No. E058472.

III. DISCUSSION

Because this appeal raises the same issue that was raised in case No. E058472, the parties filed a joint application and stipulation on February 5, 2014, to affirm the suspension of visits, remand with directions and direct immediate issuance of remittitur. This stipulated disposition is the same as that in case No. E058472.

A stipulated reversal under Code of Civil Procedure section 128, subdivision (a)(8) is permissible in a dependency case when the parties agree that reversible error occurred, and the stipulated reversal will expedite the final resolution of the case on the merits. (*In re Rashad H.* (2000) 78 Cal.App.4th 376, 380-382.) In this case, the result is to affirm with directions, but the same reasoning applies. Because this court previously determined the same issue involving the same parties in case No. E058472, this court’s determination in case No. E058472 is law of the case in this appeal. (*Morohoshi v. Pacific Home* (2004) 34 Cal.4th 482, 491.) This stipulated judgment will expedite the final resolution of the case on the merits.

IV. DISPOSITION

The juvenile court is directed to enter an order giving guidance on the conditions under which visitation may commence and any limitations or required circumstances for such visitation. In all other respects, the order appealed from is affirmed. Pursuant to the stipulation of the parties, the clerk of this court is directed to issue the remittitur forthwith. (Cal. Rules of Court, rules 8.470, 8.272(c)(1).)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST
J.

We concur:

RAMIREZ
P. J.

CODRINGTON
J.